

March 20, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands – WT Docket No. 03-66*

NOTICE OF ORAL EX PARTE COMMUNICATION

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to advise that earlier today I spoke by telephone on behalf of the Wireless Communications Association International, Inc. ("WCA") with Barry Ohlson, Senior Legal Advisor to Commissioner Jonathan S. Adelstein. The purpose of my call was to express the opposition of wireless broadband system developers to recent proposals for the reinstatement of a rule limiting Educational Broadband Service ("EBS") excess capacity lease terms.¹

I expressed that, while WCA is pleased to see that the National ITFS Association ("NIA") and the Catholic Television Network ("CTN") have retreated from their earlier proposal to limit the term of EBS leases to just 15 years, their most recent proposals still do not provide assured access to spectrum for a sufficient length of time to satisfy the needs of the investment community. I pointed out that WCA recently filed a study by Michael Pelcovits which concluded that any lease period shorter than 35 years may expose a potential investor to a substantial possibility of earning inadequate returns on investments, and that even leases in excess of 35 years may not yield a positive financial result depending on the circumstances. I expressed WCA's belief that the proposal by NIA for a 25 year maximum term simply does not provide sufficient time to assure an adequate return. While I expressed the view that CTN's proposal for a 30 year maximum is a step in the right direction, I also noted that CTN appears

¹ See Letter from Todd D. Gray, Counsel to NIA, and Edwin N. Lavergne, Counsel to CTN, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 03-66 (filed Mar. 17, 2006).

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also to call for a mandatory revisiting of EBS lease provisions at the 15, 20 and 25 year marks to accommodate the EBS licensee (without regard for the impact of such revisiting on the commercial network),² and that adoption of such a one-sided provision would introduce inordinate risk for potential investors.

Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being filed with the office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel for the Wireless Communications
Association International, Inc.

cc: Barry Ohlson

² The specific CTN proposal would require every EBS lease to "provide the EBS licensee at the 15th year and every 5 years thereafter, with the ability to review its educational use requirements so as to ensure the efficient and effective use of the EBS licensee's reserved capacity for educational purposes in light of changes in educational needs, technology, and other relevant factors." *Id.* at 2. Presumably, CTN is not merely proposing that EBS licensee engage in a unilateral review of changes, but that the commercial lessee be required in some fashion to accommodate those needs. It is this latter, unspecified obligation on the part of the commercial lessee that would prove problematic, for it prevents an investor from today understanding what the operator's rights and obligations will be after 15 years.